redemption statement and neither is a valuation report in respect of the property produced. Further, no affidavit of the debtor's father is filed giving his consent as alleged by the debtor. With respect, in the absence of supporting evidence, it is a mere speculation!

As to the two civil suits relied on by the debtor, the two civil suits are still pending and the debtor may succeed or fail and it does not help him on any way to show that he is able to pay his debts. It is purely speculative.

In the present case, judgment was entered on 15 January 1988 which is almost two years ago. If the debtor is genuine and able to settle the debt he could very well have done so much sooner as the debt has been outstanding for almost two years.

In the result I was of the view that the grounds relied on by the debtor to oppose the petition have no merits at all for the reasons set out by me and the debtor clearly committed an act of bankruptcy and in the circumstances the proper order I should make was to grant the receiving order and adjudicating order and ordered so accordingly as prayed.

Order accordingly.

Solicitors: *Chew, Jugah, Wan Ulok, Goh & Co Advocates; Cheng & Associates Advocates.*

Reported by *Mathavan Devadas*

Public Bank Bhd v Pengarah Tanah & Galian & Anor

HIGH COURT (JOHORE BAHRU) — ORIGINATING MOTION NO 25-10 OF 1989
MOHTAR ABDULLAH JC
22 JUNE 1989

Land Law — Registrar's caveat — Appeal against registrar's decision — Registrar entering caveat at request of Inland Revenue Department — Caveat entered after charge in favour of plaintiff registered — Whether appeal against decision of registrar must be made within three months from date of communication of decision to enter caveat or from date of refusal of application for cancellation of caveat — Whether appeal time barred — National Land Code 1965, ss 321(3) (b), (c) & 418

The plaintiff was the registered chargee of the land in question. Following the creation of the charge, a registrar's caveat was entered by the Registrar of Titles at the request of the Inland Revenue Department. The notice of entry of the registrar's caveat was received by the plaintiff on 20 October 1988. The plaintiff's request to the Registrar of Titles to have the caveat removed was rejected on 27 December 1988. On 29 January 1989, the plaintiff filed an appeal to the High Court under s 418 of the National Land Code 1965 against the decision of the Registrar of Land Titles. The second defendant, the Director-General of Inland Revenue, objected to the application of the plaintiff contending that it was time barred.

Held, dismissing the plaintiff's appeal:

(1) In the instant case, s 321(3)(b) and the second limb of para (c) did not apply as there was no application for the cancellation of the caveat by the proprietors of the land in question. The plaintiff was not the proprietor of the land and consequently had no right to apply for the cancellation of the caveat under para (b). The second limb of para (c) did not arise at all.

(2) By virtue of s 418, the time limited for appeal against the order of the registrar is three months from the date of communication of the decision of the registrar. In the instant case, the decision of the registrar was the decision to enter the caveat and not the decision to refuse the application for cancellation of the said caveat since s 321(3)(b) and the second limb of para (c) were not relevant. As the plaintiff's appeal under s 418 was entered on 29 January 1989, it was filed out of time and was consequently time barred. The second objection was, accordingly, upheld.

[*Editorial Note*: The plaintiff's appeal to the Supreme Court vide Civil Appeal No 01-35 of 1989 was heard on 16 April 1990 and the court (comprising Hashim Yeop A Sani CJ (Malaya), Gunn Chit Tuan and Jermuri Serjan SCJJ) dismissed the appeal.]

Legislation referred to
National Land Code 1965 s 321(3)(b), (c), 418

Tan Kiah Teck for the plaintiff.
Zulkefli bin Ahmad Makinuddin (State Legal Adviser, Johore) for the first defendant.
Balia Yusof bin Wahi for the second defendant.

Cur Adv Vult

Mohtar Abdullah JC: The notice of entry of the registrar's caveat dated 29 September 1988 in Form 19A was received by the plaintiff on 20 October 1988 as admitted in para 6 of the affidavit of Chew Sooi Hin, the manager and attorney of the plaintiff. The plaintiff appealed to the registrar by letter dated 21 December 1988 and the registrar rejected the plaintiff's request on 27 December 1988.

By virtue of s 321(3), a registrar's caveat shall continue in force until it is cancelled by the registrar:

(a) of the registrar's own motion; or
(b) on an application in that behalf by the proprietor of the land affected; or
(c) pursuant to any order of the court made on an appeal under s 418 against the registrar's decision to enter the caveat, or against the registrar's refusal of any application for its cancellation under para (b).

Paragraph (b) and the second limb of para (c) of s 321(3) do not apply in the present case as there is no application for the cancellation of the said caveat by the proprietors of the land in question. The plaintiff is not the proprietor of the land in question, and consequently has no right to apply for the cancellation of the caveat under para (b). The second limb of para (c) does not arise at all.

By virtue of s 418, the time limited for appeal against the order of the registrar is three months from the date of

communication of the decision of the registrar. The decision of the registrar in this case is the decision to enter the caveat and not the decision to refuse the application for cancellation of the said caveat since para (b) and the second limb of para (c) of s 321 are not relevant in the present case. Therefore, for the purpose of computation of time under s 418, it is crystal clear that time runs from the date of communication of the decision of the registrar to enter the caveat, ie 20 October 1988. The plaintiff's appeal under s 418 was entered on 29 January 1989. Therefore, I hold that the plaintiff's appeal was filed out of time and consequently time barred. The second defendant's (intervener) objection is hereby upheld. There being no application for enlargement of time or submission in the alternative for this court to exercise its inherent jurisdiction to enlarge time, I leave the matter to rest.

I reluctantly dismiss this application, reluctantly because I feel that the continuance of the registrar's caveat may possibly affect the price the land in question would fetch in the auction sale, the amount the plaintiff can hope to recover, and consequently the share of the balance of the proceeds of the sale, if any, that the intervener might possibly hope to gain. The auction price may not be enough even to pay off the sum due to the plaintiff — what more the other sums stated in the court order (dated 7 September 1988). The interest of the Inland Revenue Department might, in retrospect, be best served if the second defendant agrees to the withdrawal of the caveat and apply for the necessary amendments to the court order (dated 7 September 1988) to include the provision for payment of the balance of the proceeds, if any, to the Inland Revenue Department. Though the second defendant (intervener) has the right in law to maintain the status quo and though the plaintiff is technically knocked out by the time bar, the second defendant should, in my opinion, not kill or maim the goose that may lay the forlorn egg which the Inland Revenue Department seeks to lay its hands on. [No order as to costs was made.]

Application dismissed.

Solicitors: *Tan & Tan.*

Reported by *Teo Keang Sood*

Kim Wah Theatre Sdn Bhd v Fahlum Development Sdn Bhd

HIGH COURT (KUALA LUMPUR) — COMPANIES WINDING-UP NO 28(42)-176-86
SITI NORMA YAAKOB J
5 FEBRUARY 1990

Companies and Corporations — Winding up — Application to stay petition by majority creditors — Whether wishes of majority creditors reasonable — Whether special circumstances exist to render winding up desirable — Companies Act 1965, s 221(1)

The petitioner in this compulsory winding-up petition is an unsecured creditor who had obtained judgment against the respondent for $240,730.10 with interest and costs. Together with the respondent, the majority creditors opposing the petition are purchasers of the low cost flats that the respondent, as housing developers, are trying to complete on a housing project known as Taman Rishah, at Jelapang, Ipoh, pursuant to a joint venture agreement the respondent had with the owners of the land.

At the hearing of the petition, the opposing creditors sought a stay of the petition for a period of ten months to enable the respondent to complete constructing the flats in Phase IV of the project so that they can fulfill their obligations to the purchasers of the uncompleted flats and in the process settle all outstanding sums due to all their creditors including the petitioner.

Held, staying the petition:

(1) The law on the functions of the court when dealing with a petition for the compulsory winding up of a company is that once a debt has been proved to be unpaid and that the company is insolvent, the petitioner is entitled to a winding-up order.

(2) The creditors' prime facie right to a winding-up order is subject to the discretion provided by the language of s 221(1) of the Companies Act 1965, in that the court may decide not to do so, for instance, where the petition is opposed by a majority of the creditors.

(3) The opposing creditors, particularly the majority purchasers of the flats, have made out a reasonable request to stay the petition for just ten months as the respondent has given their undertaking to have Phase IV completed by then. This will not prejudice the petitioner as the interest on its debt is still running.

(4) No special circumstances have been shown by the petitioner to warrant the winding up being made in its favour.

Cases referred to

1 *Re ABC Coupler & Engineering Co Ltd* [1961] 1 All ER 354 (folld)
2 *Re P & J Macrae Ltd* [1961] 1 All ER 302 (refd)

Legislation referred to

Companies Act 1965 s 221(1)

R Anantham for the petitioner.
MS Murthi for the respondent.
Ng Chew Hor for the opposing creditors.

Cur Adv Vult

Siti Norma Yaakob J: The petitioner in this compulsory winding-up petition is an unsecured creditor who had